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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/515,766 | 03/01/2000 | Heino Hamelers | 34648/00439USPX | 2696 |
| 27045 | 7590 | 05/17/2004 | EXAMINER | |
| ERICSSON INC. 6300 LEGACY DRIVE M/S EVR C11 PLANO, TX 75024 | | | ODLAND, DAVID E | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2662 | |
| DATE MAILED: 05/17/2004 | | | | |

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/515,766

Applicant(s)

HAMELEERS ET AL.

Examiner

David Odland

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2662

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1,3,5-15 and 18-31.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

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Continuation of 2a: The applicant has amended claim 1 by adding that 'each' base transceiver station 'is' directly connected to the interface means, which changes the scope of the claims.

The After Final amendment will not be entered because it raises new issues that would require further search and/or consideration.

Continuation of part 5c: the Applicant's arguments are not persuasive.

Specifically, the Applicant argues on pages 10 and 11 with respect to the 35 USC 112 second paragraph rejection, that the Examiner has misread the claim and that the first and second layers are part of the packet switched protocol based cellular communications network and not part of the communications network as a whole. However, as currently written the claim can be interpreted as having a communications network, as a whole, comprise the first and second layers *or* the packet switched protocol based cellular communications network as comprising the first and second layers. Therefore, this dual interpretation continues to render the claim indefinite since it is not distinctly claimed which one of the communications network or the cellular network comprise the first and second layers.

Furthermore, the Applicant argues on page 12 with respect to claim 1 that the Barany reference does not teach the applicants invention because it does not disclose payload information is sent directly from the base station to the interface. The Examiner respectfully disagrees because this is not a limitation of the claim. The claim merely recites that the payload is directly routed to the interface by the *second layer* and does not particular recite that the base station is directly sending the payload. Furthermore, assuming *arguendo* and the claim did recite such a limitation, Barany clearly shows that base station BSSY directly sends payload

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information to the SGSN which is part of the interface to the further IP network and so indeed the rejection is proper.


Also, on page 13 first paragraph the Applicant argues that Barany fails to anticipate claim 1 because in the Applicant's invention signaling and payload information for a single call are split into different paths. The Examiner respectfully disagrees. Claim one does not recite that the signaling and payload information of a single call are 'split into different paths'.

Furthermore, assuming *arguendo* and the claim did recite such a limitation, Barany shows that the payload and signaling of a call are split into different paths, wherein payload travels over the path labeled 'T1' and signaling travels over the path 'A' (see figure 4). Furthermore, the Applicant asserts that the Examiner has not distinguished between two networks (CS and PS) and two layers within one cellular network. The Examiner contests such as assertion. There is nothing in recited the claim that would require the Examiner to make such a distinction and furthermore the Examiner has not made any suggestion that the CS and PS of Barany correspond to the first and second layers of the present invention. Conversely, the Examiner has distinctly pointed out what aspects of Barany correspond to the first layer, the second layer and the interface means (see the Final Office Action dated 03/04/2004).

Lastly, on page 13 second paragraph the Applicant argues that claim 14 includes analogous limitations as claim 1 and for the same reasons Barany does not disclose the Applicant's invention. The Examiner respectfully disagrees. Firstly, for the same reasons discussed above Barany does indeed disclose the claimed invention. Furthermore, the Applicant is reminded that a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the

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claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Thus as currently written, claim 14 is merely a "...method comprising transferring the payload information of the telephone call to and from the interface means via a direct route through the second layer." (see lines 10-12 of claim 14). Since Barany discloses that base station BSSY directly sends payload information to the SGSN which is part of the interface, Barany clearly anticipates all of the limitations of claim 14 that are given patentable weight (i.e. the limitations in the preamble are not given patentable weight and thus the Applicant's arguments made with respect to claim 1 are not necessarily applicable to claim 14).



JOHN PEZZLO
PRIMARY EXAMINER